

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,
Hawaii Administrative Rules

November 13, 2006

SUMMARY

1. New sections 18-237-8.6-01, 18-237-8.6-02, 18-237-8.6-03, 18-237-8.6-04, 18-237-8.6-05, 18-237-8.6-06, 18-237-8.6-07, 18-237-8.6-08, 18-237-8.6-09, and 18-237-8.6-10 are added.

2. Sections 18-237-34-01, 18-237-34-02, 18-237-34-03, 18-237-34-04, 18-237-34-05, 18-237-34-06, 18-237-34-07, 18-237-34-08, 18-237-34-09, 18-237-34-10, 18-237-34-11, and 18-237-34-12 are repealed.

§18-237-8.6-01 Definitions. Where used in sections 18-237-8.6-01 to 18-237-8.6-10, unless the context otherwise requires:

"Amusements" means operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public.

"Business" means the same as the term is defined in chapter 237, HRS.

"Contracting" means the same as the term is defined in chapter 237, HRS.

"Contractor" means the same as the term is defined in chapter 237, HRS.

"Control" means to exercise restraining or directing influence over.

"Documented" means recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which is admissible as an evidence in a court of law.

"Gross income" means the same as the term is defined in chapter 237, HRS.

"Gross proceeds of sale" means the same as the term is defined in chapter 237, HRS.

"Hawaii district" means the taxation district for the county of Hawaii.

"Home office" means the principal place of business in this State from which the trade or business of the taxpayer is directed or managed.

"Intangible property" means, but is not limited to, franchises, patent, copyright, formula, process, design, pattern, know how, format, or other similar items.

"Job site" means the place where a structure or group of structures was, is, or is to be located. It is a location

§18-237-8.6-01

of a property or a plot of land prepared for or underlying a structure or development.

"Kauai district" means the taxation district for the county of Kauai.

"Maui district" means the taxation district for the counties of Maui and Kalawao, which includes the islands of Maui, Molokai, and Lanai.

"Nexus" means, but is not limited to, physical presence in the State or the taxation district as the context may require.

"Oahu district" means the taxation district for the city and county of Honolulu.

"Physical presence" means the presence of one or more employees, representatives, property, or closely-related subsidiaries.

"Place of business" means a physical location in this State at which the trade or business of the taxpayer is conducted. This term does not include a transient or insubstantial location or facilities, such as hotel rooms, dropboxes, telephone number listings, or telephone answering services.

"Profit centers" are measurement tools used by many different industries. They are a means by which management of a company can analyze revenues and related expenses generated by a profit unit. A profit unit can be a product, a line of business or a person.

"Real property" means the same as the term is defined in chapter 231-1, HRS.

"Reasonable allocation method" is a method used to distribute or apportion gross income or gross proceeds in a clear, fair and proper manner and properly reflects the gross income to each taxation district, such as based on the amount of time spent.

"Service business" means the same as the term is defined in chapter 237, HRS.

§18-237-8.6-01

"Tangible personal property" is generally property, which may be touched or felt.

"Taxation district" means the Kauai district, Hawaii district, Maui district, or Oahu district, as those districts are defined in this section.

"Taxpayer" means any person liable for tax under chapter 237, HRS. [Eff **DEC 07 2006**] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-02 Allocation of gross income and gross proceeds from sales of tangible personal property. Except as provided in this section, the gross income and gross proceeds of sale derived from a taxpayer's sale of tangible personal property, shall be allocated to the taxation district to which the property is delivered, regardless of where the title to the property passes. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for sales of tangible personal property shipped or delivered to the Oahu district provided the taxpayer has substantial nexus with the Oahu district. Substantial nexus is created by, but is not limited to physical presence, such as the presence of one or more employees, representatives, or property, in the Oahu district for purposes of the county surcharge under section 237-8.6, HRS.

Example 1: Taxpayer, a retailer located in the Oahu district, receives an order for products from Purchaser. Taxpayer accepts the order and delivers the products to the Maui district. Taxpayer shall allocate the gross income from these sales to the Maui district, where the products were delivered. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the surcharge is levied on gross income from products delivered in the Oahu district and the destination of the shipment is outside of the Oahu district.

Example 2: Taxpayer, a retailer located in the Maui district with an office or store in the Oahu district, delivers products to Purchaser in the Oahu district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Taxpayer shall be subject to the 0.5 per cent county surcharge because substantial nexus with the Oahu district is established through its office or store in the Oahu district.

Example 3: Taxpayer, a retailer located in the Maui district, sells products to Purchaser located in the Oahu district. Pursuant to Purchaser's instructions, Taxpayer directs Taxpayer's product manufacturer, who is located in the Kauai district, to

deliver the products to Purchaser's office or project in the Maui district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Maui district, where the products were delivered. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the surcharge is levied on gross income arising from the sale of tangible personal property delivered in the Oahu district.

Example 4: Company XYZ, located in the Maui district, does not have an office, store, or other representation in the Oahu district, delivers products to Customer ABC, who maintains a central warehouse in the Oahu district. Subsequently, Customer ABC delivers the products to its branch stores located in other taxation districts. Company XYZ shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Company XYZ shall not be subject to the 0.5 per cent county surcharge because Company XYZ does not have an office, store, or other representation in the Oahu district, thus substantial nexus with the Oahu district is not established.

Example 5: Retailer located out-of-state has a sales agent in the Oahu district, sells and delivers products to Purchaser in the Oahu district. Retailer shall be subject to the general excise tax for the sales in the Oahu district because substantial nexus with the State is established through its sales agent in the Oahu district. Retailer shall also be subject to the 0.5 per cent county surcharge because substantial nexus with the Oahu district is established through its sales agent in the Oahu district.

Example 6: Same facts as in example 5, except that Retailer does not have an office, employees or other representation, including any sales person, in the Oahu district. Retailer shall not be subject to the general excise tax for the sales in the Oahu district because Retailer does not have an office, store, or other representation in the Oahu district, thus there is no substantial nexus with the State. Retailer shall not be subject to the 0.5 per cent

§18-237-8.6-02

county surcharge either because Retailer does not have an office, store, or other representation in the Oahu district, thus substantial nexus with the Oahu district is not established. [Eff **DEC 07 2006**]
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-03 Allocation of gross income received by service businesses. Gross income received by a taxpayer engaged in a service business shall be allocated to the taxation district in which the services are intended to be used or consumed. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for services intended to be used or consumed in the Oahu district provided the taxpayer has substantial nexus with the Oahu district.

Example 1: Taxpayer, an attorney whose home office is in the Oahu district, is retained by a client in the Maui district to prepare a lease for land in the Kauai district. Taxpayer shall allocate the income to the Kauai district, where the services are intended to be consumed. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the services are intended to be consumed outside the Oahu district.

Example 2: Taxpayer is an accounting firm. Taxpayer has a home office in the Oahu district, which constitutes substantial nexus with the Oahu district. Taxpayer's employees travel to other taxation districts to conduct audits of clients. Taxpayer shall allocate income to the taxation districts, where the services are intended to be consumed by the clients. Taxpayer shall be subject to the 0.5 per cent county surcharge for services intended to be consumed in the Oahu district.

Example 3: Taxpayer provides dentistry services from places of business in all of the taxation districts. Taxpayer has a home office in the Maui district. Taxpayer travels to the Oahu district to provide dentistry services. Taxpayer shall allocate the gross income to the taxation districts where the services are intended to be used or consumed. In this case, substantial nexus is established by Taxpayer's physical presence in the Oahu district. Taxpayer shall be subject to the 0.5 per cent county surcharge

§18-237-8.6-03

for services intended to be used or consumed in the Oahu district but shall not be subject to the 0.5 per cent county surcharge for services intended to be consumed in taxation districts other than the Oahu district.

Example 4: Taxpayer is a law firm comprised of sixty-five attorneys. Sixty attorneys work in Taxpayer's home office in the Oahu district and five work in Taxpayer's place of business located in the Hawaii district. Taxpayer is retained by a client in the Hawaii district for a court case in the Hawaii district. Taxpayer shall allocate gross income from services performed by the attorneys to the Hawaii district where Taxpayer's services are intended to be used or consumed, notwithstanding incidental travel, meetings, or court appearances, outside of the taxation district, or receipt of support services from the place of business located outside of the taxation district. Taxpayer shall not be subject to the 0.5 per cent county surcharge regardless of the substantial nexus with the Oahu district because the legal services are intended to be used or consumed in the Hawaii district. [Eff **DEC 07 2006**] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-04 Allocation of gross income from commissions. Commission income received by a taxpayer shall be allocated to the taxation district in which the services are rendered by the taxpayer except for commissions earned from real estate sales, or leasing, or from financing transactions secured by real estate. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds from commissions when the services are rendered by the taxpayer in the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. In the case of commissions earned from real estate sales or from financing transactions secured by real estate, commission income received by a taxpayer shall be allocated to the taxation district in which the real property is located. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds from commissions earned from real estate sales, or leasing, or from financing transactions secured by real estate where the real property is located in the Oahu district.

Example 1: Taxpayer has an office located in the Oahu district, which sells a travel package for Disney World, Florida under section 237-18(f) to Purchaser located in the Oahu district. Taxpayer shall allocate the commission income to the Oahu district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.

Example 2: Same facts as in example 1, except that Purchaser is located in the Maui district. Taxpayer shall allocate the commission income to the Oahu district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.

Example 3: Same facts as in example 1, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the commission income to the Maui district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall not be subject to the 0.5 per cent county surcharge because such services are rendered outside of the Oahu district.

Example 4: Same facts as in example 1, except that Taxpayer is located in the Maui district and Purchaser is located in the Hawaii district. Taxpayer shall allocate the commission income to the Maui district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall not be subject to the 0.5 per cent county surcharge because such services are rendered outside of the Oahu district.

Example 5: Taxpayer is a securities broker that has an office in the Oahu district, sells securities to Purchaser who is located in the Maui district. Taxpayer shall allocate the commission income to the Oahu district where the services of selling securities are rendered. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.

Example 6: Taxpayer is a real estate company licensed as a real estate broker under chapter 467, HRS. Taxpayer has places of business in the Oahu district, Kauai district, Maui district, and Hawaii district. Each of Taxpayer's brokers and salespersons is based in one of the places of business. The brokers and salespersons travel to other taxation districts to meet with clients, manage clients' properties, show properties, negotiate, review and close transactions. Brokers and Salespersons sell a property in the Oahu district. Taxpayer shall allocate the commission income received to the taxation districts where the real property is located. The gross income derived from the sale or leasing of real property in the Oahu district shall be allocated to the Oahu district where the real property is located. All of the gross income paid to Taxpayer and

§18-237-8.6-04

Taxpayer's brokers and salespersons shall be subject to the 0.5 per cent county surcharge in this case because the real property is located in the Oahu district. Taxpayer and each of Taxpayer's brokers and salespersons shall allocate the income that Taxpayer, Brokers or Salespersons receives under section 237-18(e), HRS, to the taxation district where the real property is located, regardless of the location of the place of business of Taxpayer, Brokers or Salespersons. Brokers or Salespersons shall also be subject to the 0.5 per cent county surcharge for real property sold in the Oahu district.

[EffDEC 07 2006]

] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-05 Allocation of gross income from the rental or lease of tangible and intangible personal property.

(a) Except as provided in this section, gross income from the rental or lease of tangible and intangible personal property, shall be allocated to the taxation district in which the property is used. If the property is used in more than one taxation district, the taxpayer shall allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to each taxation district; provided that the allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for renting or leasing of personal property to the extent that the property is used in the Oahu district.

Example 1: Taxpayer is engaged in the business of renting motor vehicles from a place of business in each of the four taxation districts. Taxpayer shall allocate the gross income to the taxation district in which the motor vehicle is used. Taxpayer shall be subject to the 0.5 per cent county surcharge on the gross income from motor vehicles used in the Oahu district because the personal property is being used in the Oahu district.

Example 2: Taxpayer, located in the Oahu district, is engaged in the business of renting equipment. Taxpayer rents equipment to XYZ, located in the Maui district, for a job in the Kauai district. Taxpayer shall allocate the gross income from this rental to the Kauai district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.

Example 3: Taxpayer, located in the Oahu district, has written and copyrighted a song. A musician pays Taxpayer a royalty to perform that song for profit in a hotel in the Maui district. Taxpayer shall allocate the gross income from the license of the copyright to the Maui district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.

Example 4: Same facts as in example 3, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the gross income from the license or royalty of his intangible personal property to the Maui district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.

Example 5: Same facts as in example 3, except that Taxpayer is located in the Maui district and the licensee is in the Oahu district. Taxpayer shall allocate the gross income from the license of his copyright to the Oahu district where the property is used. Taxpayer shall be subject to the 0.5 per cent county surcharge because the property is used in the Oahu district.

(b) Where a taxpayer rents or leases tangible personal property, or licenses or receives royalty from intangible personal property, which is used in more than one taxation district, the gross income shall be allocated to the taxation districts by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to each taxation district; provided that the allocation method is documented. This rule also applies to property, which is constantly in transit between taxation districts, such as barges, containers, and aircraft without home ports or bases. Taxpayer shall be subject to the 0.5 per cent county surcharge to the extent that the gross income from the rental or lease of the personal property is allocated to the Oahu district pursuant to a reasonable allocation method.

Example 1: Taxpayer is engaged in the business of renting equipment to XYZ to be used in the Maui district and the Oahu district. The equipment will be used in the Maui district for six months and in the Oahu district for six months. Taxpayer shall allocate fifty per cent of the gross income from the rental of the equipment to the Maui district and fifty per cent to the Oahu district. Taxpayer shall be subject to the 0.5 per cent county surcharge on fifty per cent of the gross income because using a reasonable allocation

§18-237-8.6-05

method based on time used, the equipment is used fifty per cent of the time in the Oahu district.

Example 2: Taxpayer is engaged in the business of leasing containers to XYZ. These containers are constantly in transit between taxation districts. Taxpayer shall allocate the gross income by using a reasonable allocation method among the taxation districts that clearly, fairly, and properly reflects gross income in each taxation district and document that allocation method. Taxpayer shall be subject to the 0.5 per cent county surcharge on the gross proceeds allocable to the Oahu district as determined under a reasonable allocation method. [Eff DEC 07 2006]
] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-06 Allocation of gross income from the rental or lease of real property. Gross income from a taxpayer's rental or lease of real property in this State shall be allocated to the taxation district where the real property is located. Lessors are subject to the 0.5 per cent county surcharge for rental or lease of real property located in the Oahu district. Lessors in taxation districts other than the Oahu district are subject to the county surcharge if they rent or lease real property located in the Oahu district.

Example: Taxpayer rents condominium units located in each of the four taxation districts. Taxpayer shall allocate the gross income from the rental of each unit to the taxation district in which the condominium unit is located. Taxpayer shall be subject to the 0.5 per cent county surcharge on gross income from the condominium units rented in the Oahu district because the real property is located in the Oahu district. [Eff **DEC 07 2006**] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-07 Allocation of gross income from contracting. Gross income from contracting shall be allocated to the taxation district where the job site is located. Contractors, with a home office in taxation districts other than the Oahu district are subject to the 0.5 per cent county surcharge if the job site is located in the Oahu district. Gross income from contracting in the Oahu district shall be allocated to the Oahu district because the job site is located in the Oahu district.

Example 1: Taxpayer with an office located in the Oahu district contracts for a construction project in the Maui district. Taxpayer shall allocate the gross income from this project to the Maui district. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the job site is located outside of the Oahu district.

Example 2: Assume the same facts in Example 1, except that Taxpayer is the prime contractor for the project and Taxpayer subcontracts various aspects of the job to architect W and engineer X, located in the Oahu district. Taxpayer shall allocate the gross income from this project to the Maui district. W and X shall allocate the gross income they receive from Taxpayer to the Maui district. Taxpayer, W, and X shall not be subject to the 0.5 per cent county surcharge because the job site is located outside of the Oahu district. [Eff DEC 07 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-08 Allocation of gross income from interest.

(a) The gross income from a taxpayer's investment interest shall be allocated to the taxation district where the control of the investment is located unless the taxpayer can show that a different location should control. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the taxation district; provided that the allocation method is documented. Taxpayer shall be subject to the 0.5 per cent county surcharge if the business's control of the investment is in the Oahu district.

Example 1: Taxpayer has retail locations in all taxation districts and has corporate offices located in the Oahu district. Taxpayer has a central cash management account controlled by the corporate office located in the Oahu district that places the gross receipts from all retail locations into one interest bearing bank account. Taxpayer shall allocate the interest received from this bank account to the Oahu district because the account is controlled by the corporate office located in the Oahu district. Therefore, the interest shall be subject to the 0.5 per cent county surcharge.

Example 2: The same facts as in example 1, except that a separate bank account is created for the Maui district retail locations. The money deposited into that bank account is used for improvements to the Maui district stores and controlled by the Maui district retail locations. Interest on this bank account shall not be subject to the 0.5 per cent county surcharge because the account is being controlled outside of the Oahu district.

(b) The gross income from a taxpayer's deferred payment interest shall be allocated to the taxation district in which the sale that generated the interest is assigned under section 18-237-8.6-02 or 18-237-8.6-06. Taxpayer shall be subject to the 0.5 per cent county surcharge on the interest if the sale that generated the interest is allocated to the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and

§18-237-8.6-08

properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented.

Example 1: Taxpayer has retail locations in all of the taxation districts. Taxpayer sells goods on an installment basis or deferred payment basis. Taxpayer shall allocate the interest received on the sales by credit or on the installment basis to the taxation district in which the sales that generated the interest is assigned under section 18-237-8.6-02. The interest income generated from sales that are allocated to the Oahu district are likewise allocated to the Oahu district and subject to the 0.5 per cent county surcharge.

Example 2: Taxpayer, who does not have an office in the State, sells business or rental real estate located in the Oahu district pursuant to an agreement of sale, which provides for deferred payments of the sales price and an interest charge. Taxpayer shall be subject to the 0.5 per cent county surcharge on the interest income from the agreement of sale because the real estate that is the subject of the agreement of sale is located in the Oahu district. [Eff DEC 07 2006]
] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)


§18-237-8.6-09 Allocation of gross income of theaters, amusements, etc. The gross income from the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, or any other place at which amusements are offered to the public shall be allocated to the taxation district in which the event takes place. Taxpayers shall be subject to the 0.5 per cent county surcharge on gross income generated from events in the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. [Eff DEC 07 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-10 **All others.** The gross income or gross proceeds received by a taxpayer who reports business activity on Form G-45 or Form G-49 under the classification "all others" shall be allocated to a taxation district based upon the rules for allocating gross income for the business activity which is the most similar to the taxpayer's particular business activity. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. [Eff **DEC 07 2006**] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)


DEPARTMENT OF TAXATION

Amendments to Chapter 18-237, Hawaii Administrative Rules, on the Summary Page dated November 13, 2006, were adopted on November 13, 2006, after public notice was published in the Honolulu Star-Bulletin, the Garden Island, the Maui News, West Hawaii Today, and the Hawaii Herald-Tribune on September 29, 2006.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.


KURT KAWAFUCHI
Director of Taxation

APPROVED:


LINDA LINGLE
Governor
State of Hawaii

Dated: NOV 24 2006

APPROVED AS TO FORM:


Deputy Attorney General

06 NOV 27 PM 2:1
LIEUTENANT GOVERNOR
OFFICE